

Exhibit 25

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
No. 18 Civ. 2949 (ARR) (RER)
- - - - -x

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

- against -

XOOM ENERGY, LLC AND XOOM ENERGY
NEW YORK, LLC,
Defendants.
- - - - -x

16 Court Street
Brooklyn, New York 11241

August 30, 2022
10:21 a.m.

DEPOSITION of SUSANNA MIRKIN (REDACTED),
a Plaintiff in the above-entitled action,
held at the above time and place, taken
before SAMUEL HITTIN, a Shorthand Reporter
and Notary Public of the State of New
York, pursuant to the Federal Rules of
Civil Procedure, order and stipulations
between Counsel.

1 S. MIRKIN

2 And they need to organize either their
3 playroom or kitchen or children's
4 dressers. So I give them the system, and
5 I teach them how to declutter and how to
6 make the system running. Because they are
7 disabled children, so they don't have the
8 time to organize their homes -- so I give
9 them the system and how to go accordingly.

10 Q. Okay. And how long have you had
11 that job with Comfort Health?

12 A. Less than six months.

13 Q. What was the last job you had
14 before you were employed by Comfort
15 Health?

16 A. I was -- I had a payroll job.

17 Q. Who was your employer in the
18 payroll job?

19 A. NYPD.

20 Q. And what were your job duties in
21 that position?

22 A. I did payroll for a company. I
23 did bookkeeping, day-to-day transactions,
24 overtime sheets, entering database.

25 Q. And what was the name of that

1 S. MIRKIN

2 company?

3 A. It's NYPD.

4 Q. Oh, okay. Sorry. I
5 misunderstood. I thought you were talking
6 about a private company.

7 You did bookkeeping and
8 payroll --

9 A. For a police department.

10 Q. -- for NYPD?

11 A. Correct.

12 Q. Okay. And what was the time
13 period that you had that position with
14 NYPD?

15 A. 2015 till 2021.

16 Q. And what was the job that you
17 had before you went to work for NYPD?

18 A. The job I had before was Early
19 Intervention. It's called Early
20 Intervention, by Challenge. I was a
21 service coordinator.

22 Q. The name of the company is Early
23 Intervention, or the --

24 A. Challenge Early Intervention.
25 That's the name of the company.

1 S. MIRKIN

2 A. I'm not sure.

3 Q. Okay. Ms. Mirkin, will you
4 please tell us in your own words what you
5 think this lawsuit is about.

6 A. This lawsuit is about how us and
7 many customers were overcharged using
8 electricity in New York state.

9 Q. Overcharged compared to what?

10 A. Comparing to other ESCOs.

11 Q. Okay. Do you know what other
12 ESCOs charged during that time period that
13 you were with XOOM Energy?

14 A. So according to the table,
15 Exhibit 2, the XOOM rate and the market
16 supply cost -- it's -- from the period of
17 May till November, it states different
18 rates. So it's a tremendous difference in
19 percentage.

20 Q. And you are looking at what was
21 marked as Exhibit 2, which is the table
22 under paragraph 54 --

23 A. Correct.

24 Q. -- correct?

25 And is it your understanding

1 S. MIRKIN

2 that the market supply cost is the rate
3 that other ESCOs charged during those time
4 periods?

5 MR. WITTELS: Objection.

6 A. Can you repeat that, please.

7 Q. Sure.

8 You told me -- my question
9 previously was, do you know what rate
10 other ESCOs charged while you were a XOOM
11 customer, and you directed your response
12 to the table that is on Exhibit 2, right?

13 A. Correct.

14 Q. Okay. And the market supply
15 cost column specifically, right?

16 A. Correct.

17 Q. Is it your understanding that
18 the market supply cost column is
19 reflective of rates that other ESCOs
20 charged during those time periods?

21 MR. WITTELS: Objection.

22 A. So according to our experts and
23 lawyers, this table was done by experts.
24 And it says the XOOM rate and the market
25 supply cost, which means market supply is

1 S. MIRKIN

2 other ESCOs available out there.

3 Q. That's your understanding of
4 what that market supply cost column means?

5 A. Yes.

6 Q. Okay. Aside from that
7 information, do you have any knowledge
8 about the rates that other ESCOs charged
9 customers in New York for electricity
10 during the time period that you were a
11 XOOM customer?

12 A. No.

13 Q. Or during any time period.

14 A. I'm not sure.

15 Q. You believe that XOOM's rate for
16 electricity -- let me back up.

17 You believe that XOOM's variable
18 rates for electricity were higher than
19 they should have been?

20 A. Yes.

21 Q. What do you think they should
22 have been?

23 A. Initially, when we signed up, it
24 was a teaser plan. And it's -- it should
25 have been the lowest comparing to other

1 S. MIRKIN

2 ESCOs. However, the next month, according
3 to the table in Exhibit 2, it went
4 significantly high. So that's
5 overcharging us.

6 Q. Because the rate increased from
7 the first month to the second month?

8 A. Correct.

9 MR. WITTELS: Objection to the
10 form.

11 You can answer, if you
12 understand the question. It was a
13 short phrase, he said.

14 A. So the difference in percentage,
15 as you can see in Exhibit 2, in May, it
16 was lower.

17 Q. Mm-hmm.

18 A. But then the next month, in
19 June, through the period of July, it
20 increased by a percentage. And then it
21 went up 16 percent, 46 percent,
22 39 percent, 51 percent, up until November.
23 So that's a significant change, starting
24 from May till November. That's a big
25 percentage.

1 S. MIRKIN

2 Q. Right.

3 Do you know whether your
4 contract permitted that?

5 A. According to the contract, no.

6 Q. You don't know?

7 A. No, it's not permitted.

8 Q. Okay. And why do you say that?

9 A. So let's go back to the
10 contract.

11 Q. So now you're looking at
12 Exhibit 3?

13 A. Exhibit 3.

14 Q. And are you not able to answer
15 my question without looking at Exhibit 3?

16 A. I can answer your question.

17 Q. Okay. Why -- you say the
18 contract does not allow for XOOM to
19 increase its rates from what the rate was
20 the first month; is that right?

21 MR. WITTELS: Objection. It
22 misstates the testimony.

23 You can answer. I objected to
24 his question.

25 Why don't you read back the

CERTIFICATION

I, Samuel Hittin, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of September,
2022.



SAMUEL HITTIN

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